

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DOUGLAS ARTHUR WOLSHLAGER,

Plaintiff,

CASE NO. 1:19-CV-293

v.

HON. ROBERT J. JONKER

JEFF GAST, *et al.*,

Defendant.

_____ /

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Kent’s Report and Recommendation in this matter (ECF No. 8), as well as the Objection submitted by Plaintiff.¹ (ECF No. 10). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

¹This is a generous characterization. The filing contains a heading entitled “Points and Authorities in Opposition to Demurrer of Ben Eberly, S Yect” and does nothing by way of addressing the Magistrate Judge’s analysis. (ECF No. 10). Moreover, Plaintiff has since appeared to change course, and has filed two motions to dismiss this case. (ECF No. 11, 12). Out of an abundance of caution, the Court reviews the record in this case, including these materials, de novo.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and the materials submitted by Plaintiff. After a de novo review, the Court finds that Magistrate Judge Kent's Report and Recommendation, which concluded that this action must be dismissed for lack of subject-matter jurisdiction, is factually sound and legally correct.

Indeed, nothing in the Plaintiff's subsequent materials address this fundamental analysis. Plaintiff's "Points and Authorities" merely contain general assertions and statements that are tangential at best to the matter at hand. Nothing in them disturb the Magistrate Judge's recommended conclusions and, indeed, Plaintiff's subsequent filings make clear he agrees this case should be dismissed. The Court agrees with the Magistrate Judge that this case should be dismissed for lack of subject-matter jurisdiction for the very reasons detailed by the Magistrate Judge.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 8) is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that:

1. This case is **DISMISSED** for lack of subject-matter jurisdiction.
2. Plaintiff's Motions to Dismiss (ECF Nos. 11 & 12) are **DISMISSED AS MOOT**.

A separate Judgment shall issue.

Dated: May 24, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE